

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ENNIS LEE BROWN,

Plaintiff,

v.

Case No. 15-cv-509-pp
Appeal No. 16-1622

MICHAEL J. HICKS, et al.,

Defendants.

DECISION AND ORDER DECLINING TO RULE ON PLAINTIFF'S MOTION TO RECUSE JUDGE PEPPER FOR LACK OF JURISDICTION (DKT. NO. 56)

On March 17, 2016, this court dismissed the plaintiff's case. Dkt. No. 29. The court entered judgment on March 21, 2016. Dkt. No. 33. On the same day, the plaintiff filed a notice of appeal. Dkt. No. 30. Then, on July 25, 2016—four months *after* he filed his notice of appeal—the plaintiff filed the instant motion to recuse Judge Pepper for bias, pursuant to 28 U.S.C. §455(a); he filed the motion in this case and in two other cases he filed in this district (Case No. 16-cv-241-PP, Case No. 16-cv-632-PP). Dkt. No. 56.

"The filing of an appeal . . . deprive[s] the district court of jurisdiction over the case." Boyko v. Anderson, 185 F.3d 672, 674 (7th Cir. 1999).

[T]he district court and the court of appeals do not share jurisdiction over the same case. Jurisdiction is either all in one court or all in the other. This rule is necessary to prevent one court's stepping on the toes of the other, which would waste judicial time as well as forcing the parties to proceed in two courts in the same case at the same time.

Id. (citations omitted).

Once the case goes to the court of appeals, then, this court does not have jurisdiction to grant a motion to recuse, or to hold a hearing on it. Id. The court does not even have the power to consider the motion. Id. at 675.

Circuit Rule 57 of the Circuit Rules of the United States Court of Appeals for the Seventh Circuit states that if, during the pendency of an appeal, a party files a motion under Fed. R. Civ. P. 60(a) or 60(b), Fed. R. Crim. P. 35(b), “or any other rule that permits the modification of a final judgment,” that party should ask the district court to indicate whether it is inclined to grant the motion. If the district court says it is so inclined, the Seventh Circuit will remand the case to the district court to modify the judgment. The plaintiff’s motion, however, is not a motion under a rule permitting modification of a final judgment.

Because this court does not have jurisdiction to consider the plaintiff’s motion, and because there is no rule which allows the court to indicate how it would rule if it did have that jurisdiction, the court must decline to decide the motion.

The court **DECLINES TO RULE** on the plaintiff’s motion to recuse Judge Pepper for **lack of jurisdiction**. Dkt. No. 56.

Dated in Milwaukee, Wisconsin this 13th day of October, 2016.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge